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# Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

*Summary*

In the present report, the Special Rapporteur on the independence of judges and lawyers examines the protection of children's rights in the justice system and analyses the essential role that must be played by judges, prosecutors and lawyers in upholding children's human rights and applying international human rights norms, standards and principles at the domestic level. The Special Rapporteur endeavoured to go beyond the more limited notion of juvenile justice, so as to reflect the diverse experiences of children when they encounter the justice system as victims or witnesses, because they are in conflict with the law, or as parties to judicial proceedings.

Following a brief outline of the activities carried out by the Special Rapporteur in 2014-2015, the thematic section of the report consists of five parts. The first sets the legal framework and fundamental principles upon which the Special Rapporteur's analysis of the requirements for a child-sensitive administration of justice is based. The second part discusses access to justice and legal aid from the perspective of children. The safeguards necessary to respect, protect and fulfil children's rights at the different stages of judicial proceedings, including sentencing, are addressed in the third part. The fourth part touches on the importance of providing children with alternatives to judicial proceedings. In the last part, the Special Rapporteur draws attention to the essential need for quality and specialized education, training and capacity-building for judges, prosecutors and lawyers. Sections IV and V contain conclusions and a number of recommendations.

The Special Rapporteur concludes that investing in child-sensitive justice is indispensable to strengthening the rule of law and the enjoyment of human rights by all, as well as to building flourishing democratic societies. In all the aspects of the justice system, children have special rights, needs and interests that must be given primary consideration.

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# I. Introduction

1. The present report is the last submitted for the consideration of the Human Rights Council, in accordance with its resolution 26/7, by the current Special Rapporteur, Gabriela Knaul.

2. The Special Rapporteur decided to focus her report on the fundamental role that must be played by judges, prosecutors and lawyers in protecting children's rights. Despite the quasi-universal ratification of the Convention on the Rights of the Child, children still count among the most vulnerable to human rights violations and other types of abuse. For this reason, the importance of child-sensitive justice—justice that respects, protects and fulfils the rights of children—cannot be overemphasized. An administration of justice that fails children ultimately also fails society. The Special Rapporteur is convinced that investing in child-sensitive justice is indispensable to strengthening the rule of law and the enjoyment of human rights by all, as well as to building flourishing democratic societies.

3. After summarizing, in section II of the report, the activities she carried out in 2014 and 2015, including country visits undertaken, communications sent and events attended, she introduces the international legal framework and fundamental principles that form the basis of her analysis of the requirements for a child-sensitive administration of justice (section III, part A). In section III, part B, she discusses access to justice and legal aid from the perspective of children. In part C, she addresses the role of judges, prosecutors and lawyers in relation to the basic requirements necessary to respect, protect and fulfil children's rights at the different stages of judicial proceedings, including sentencing. In part D, she touches on the importance of providing alternatives to these judicial proceedings. Before concluding and presenting her recommendations in sections IV and V, she draws attention to the cross-cutting need for quality and specialized education, training and capacity-building for judges, prosecutors and lawyers.

4. Judges, prosecutors and lawyers have an essential part to play in upholding children's human rights and applying international human rights norms, standards and principles—in particular those specific to children—at the domestic level and in compliance with the State's international human rights obligations. In accordance with the Convention on the Rights of the Child and for the purpose of this report, the terms "child" or "children" refer to every human being, male and female, under the age of 18 years. Further, the terms "child-friendly" and "child-sensitive" are used interchangeably and understood as "that takes into account children's specific needs, views and rights".

# II. Activities in 2014 and 2015

## A. Country visits and communications with member States

5. The Special Rapporteur carried out official visits to Qatar, from 19 to 26 January 2014 (A/HRC/29/26/Add.1), the United Arab Emirates, from 28 January to 5 February 2014 (A/HRC/29/26/Add.2), Tunisia, from 27 November to 5 December 2014 (A/HRC/29/26/Add.3) and Portugal, from 27 January to 3 February 2015 (A/HRC/29/26/Add.4), at the invitation of the respective Governments.

6. The Special Rapporteur wishes to thank the Governments of France, Germany, Greece, Iraq, Kenya, Morocco, Nepal, Spain and the United States of America for inviting her to conduct official visits in their respective countries. She regrets that she was unable to undertake the visits before the end of her mandate and encourages these Governments to continue engaging with her successor.

7. Between 1 March 2014 and 28 February 2015 inclusive, she sent a total of 117 communications alleging violations of human rights in the context of her mandate to 54 Member States. Of these communications, 86 were urgent appeals and the remaining 31 were letters of allegation. Details of the communications and responses from Governments are included in the communications reports of special procedures (A/HRC/27/72, A/HRC/28/85 and A/HRC/29/50).

## B. Other activities

8. From 27 April to 1 May 2014, the Special Rapporteur attended the sixty-third session of the General Assembly of the Latin American Federation of Judges and the annual meeting of the Ibero-American Group of the International Association of Judges in Santo Domingo, Dominican Republic, where she delivered a statement on the current challenges to the independence of the judiciary and the importance of promoting capacity-building activities in international human rights law for judges.

9. On 8 and 9 May 2014, she participated in an international symposium on justice and the rule of law organized by the YükselKarkınKüçük Attorney Partnership in Istanbul, Turkey, at which she delivered a speech on the various forms of interference, pressures and attacks against the judiciary.

10. On 11 June 2014, she participated as a panellist in a side event of the Human Rights Council session entitled "Strengthening the rule of law in Venezuela", organized by the International Commission of Jurists and the International Bar Association's Human Rights Institute.

11. On 13 June 2014, the Special Rapporteur presented her annual thematic report to the Human Rights Council, which addressed judicial accountability (A/HRC/26/32) and the report on her official visit to the Russian Federation (A/HRC/26/32/Add.1).

12. On 18 June 2014, she participated in an event entitled "Independence of the judiciary: international standards and practice", organized by the Mission to Serbia of the Organization for Security and Cooperation in Europe in Belgrade.

13. On 15 July 2014, she attended a press conference on recent judicial law reforms in Cambodia, organized by the International Bar Association's Human Rights Institute in Phnom Penh.

14. On 23 October 2014, she presented her annual thematic report to the Third Committee of the General Assembly. The report highlighted the need to promote justice and the rule of law in the post-2015 development agenda and called for explicit references to access to and the administration of justice in the post-2015 sustainable development goals and targets.

15. From 29 October to 2 November 2014, she participated in the 58th Congress of the International Association of Lawyers, in Florence, Italy.

16. On 24 November 2014, she took part in an expert consultation entitled "Human rights considerations relating to the administration of justice through military tribunals and role of the integral judicial system in combating human rights violations". At the consultation, which was organized by the Office of the United Nations High Commissioner for Human Rights, pursuant to Human Rights Council resolution 25/4, the Special Rapporteur presented the findings of her 2013 report to the General Assembly on the administration of justice through military tribunals (A/68/285).

17. On 12 December 2014, she was the keynote speaker at the International Human Rights Day Lecture, which was organized in Harare by the Zimbabwe Human Rights NGO Forum and Zimbabwe Lawyers for Human Rights.

# III. Protecting children's rights in the justice system

## A. International legal framework and fundamental principles

18. A number of international human rights treaties and instruments address issues related to access to justice and to an effective remedy, the treatment and rights of persons before the courts and in judicial and administrative proceedings, and the independence of the judicial system and the legal profession. Some of these instruments are applicable to all without distinction, including on the basis of age. A number of them provide child-specific guarantees and protection. Other instruments are exclusively dedicated to children.

19. The instruments referred to throughout the present report, and which form the basis of the Special Rapporteur's analysis, are mentioned below. They do not represent an exhaustive list. Special attention is given to the provisions of the Convention on the Rights of the Child and the fundamental principles it contains. The rights and principles contained in the Convention should always be taken into account by judges, prosecutors and lawyers alike when performing any of their professional functions where children are concerned.

20. Article 14 of the International Covenant on Civil and Political Rights establishes that "all persons shall be equal before the courts and tribunals" and that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Article 14 also details a series of due-process guarantees for persons charged with a criminal offence and, in this context, it explicitly stipulates that "in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". In its general comment No. 32, the Human Rights Committee recognized that "juveniles need special protection" and recommended that States take measures "to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age".[1]

21. Other relevant international human rights instruments include the following: Basic Principles on the Independence of the Judiciary (1985); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (the Beijing Rules); Basic Principles on the Role of Lawyers (1990); Guidelines on the Role of Prosecutors (1990); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) (the Havana Rules); Guidelines for Action on Children in the Criminal Justice System (1997); Bangalore Principles of Judicial Conduct (2002); Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) (the Bangkok Rules); and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012).

### Convention on the Rights of the Child and its four fundamental principles

22. The Convention on the Rights of the Child enshrines a series of guarantees relevant to the specific protection due to children who come into contact with the justice system. Of particular relevance to the present report is article 40 of the Convention, which recognizes the "right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth" and that takes into account "the child's age". Article 40 lists a series of due-process guarantees, some of which provide for additional protection due to children. In addition, article 12 states that children shall be provided "the opportunity to be heard in any

[1] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 42 and 43.

judicial and administrative proceedings affecting" them. Finally, article 3 underlines that "the best interests of the child shall be a primary consideration" in all actions concerning children, including when undertaken by courts of law. As far as it grants broader protection to children, the Special Rapporteur considers that the Convention on the Rights of the Child should be considered and applied as *lex specialis*.

23. The Committee on the Rights of the Child has identified four general principles enshrined in the Convention[2] which must be taken into account for interpreting and implementing all the rights of the child, in particular when judges, prosecutors and lawyers are considering matters affecting children. They are the rights to non-discrimination, the right to life and development, the right to be heard and the primary consideration of the child's best interests. In its general comment No. 10 on children's rights in juvenile justice, the Committee explained that these, together with the notion of dignity, are leading principles essential to a comprehensive policy on juvenile justice.

24. The principle of non-discrimination is especially relevant when justice systems are dealing with particularly vulnerable groups of children, such as street children, children belonging to minorities, migrant children or asylum seekers, children with disabilities, or child soldiers, who may require particular attention, protection and skills from the professionals interacting with them, especially lawyers, prosecutors and judges.

25. The best interests of the child should be a primary consideration in all decisions taken within the context of the administration of justice for children. Concretely, this means that those with decision-making power in the justice system—in particular lawyers, prosecutors and judges—must be aware of this obligation and comply with it by evaluating what the best interests of the child are in each individual case presented to them. As pointed out by the Committee, "the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders".[3]

26. The child's right to life and development is particularly pertinent when judges are considering sentences in criminal cases involving children. Indeed, deprivation of liberty "has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society".[4] For this reason, the Convention dictates that it should be used only as a measure of last resort. Other types of sanctions can also seriously affect children's development and, for this reason, in these cases too, prosecutors and judges should bear in mind the necessity to respect the development of the child.

27. Finally, the Committee explained that "the right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice".[5] Lawyers have an essential part to play in facilitating children's right to be heard, provided they have the required skills to listen to children's views and represent them appropriately. The justice system itself nevertheless needs to be designed in such a way as to provide adequate opportunities for children to be heard and express their views. Judges also should be sensitized to this fundamental principle, as they are often on the receiving end of information provided during judicial proceedings and make their decisions based on this information.

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[2] See general comments No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 12; No. 12 (2009) on the right of the child to be heard, para. 2; and No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 1.

[3] General comment No. 10 (2007) on children's rights in juvenile justice, para. 10.

[4] Ibid., para. 11.

[5] Ibid., para. 12.

## B. Children's access to justice and legal aid

### 1. Access to justice for children

28. As defined by the United Nations Development Programme (UNDP), access to justice is the ability of people to seek and obtain remedy through formal or informal institutions of justice, and in conformity with human rights standards.[6] Access to justice constitutes both a fundamental human right in itself and the means of enforcing or restoring the exercise of rights that have been disregarded or violated (A/69/294, para. 50 and A/HRC/8/4, para. 17).

29. As previously underlined by the Special Rapporteur, the lack of access to justice has serious consequences for the full enjoyment of human rights. In turn, fair and effective justice systems, able to provide people with effective redress and adequate remedies, constitute the most efficient way to ensure a sense of safety, stability and prosperity, by reducing the risks associated with violence and abuses of rights and by deterring perpetrators from committing further violations (A/69/294, para. 52).

30. As children are particularly vulnerable to violations of their rights and to abuses of all sorts, their access to justice should be facilitated and reinforced. In reality, while many obstacles impede both adults' and children's access to justice, children are often disproportionately affected. They also face specific barriers owing to their status as minors.

31. Various factors and circumstances impede appropriate and equal access to justice for children; they can be clustered in six categories. First, children can face physical barriers, which include geographical distance from courts or other relevant institutions or lack of adequate facilities at those institutions' premises. Second, psychological factors can also play an important role in undermining children's access to justice. Children may be unable or reluctant to seek justice because they are too young or too traumatized to articulate what happened to them; or they are afraid of, dependent on or love the alleged perpetrator(s); or they do not perceive what happened to them as a violation of their rights. Third, children also face social and/or cultural barriers when trying to access justice; these can be related to their difficulties to communicate, fear of social stigma associated with the formal justice system, dependency on adults, or mistrust of the justice system.

32. Fourth, barriers relating to information also seriously hamper access to justice for children. Information on fundamental rights, available remedies and procedures to follow to claim their rights is not always available and, when available, often difficult to understand, even for adults. Fifth, while children lack financial autonomy and means, court proceedings often represent a heavy financial burden, as can the costs of initiating and pursuing proceedings, including lawyers' fees. Lastly, children encounter legal obstacles on their path to justice, such as lack of legal capacity or standing, lack of legal identity (especially relevant for children who are unregistered migrants, refugees or asylum seekers, or street children), or dependence on parents or a legal guardian. Dependence on adults often compounds the other obstacles for children trying to access justice.

33. Guaranteeing children the right to equal access to justice means making special provisions for them and offering them differentiated protection. As stated by the Committee on the Rights of the Child:

> "children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective child-sensitive procedures available to children and their representatives. These should include the provision of child-

[6] UNDP, *Programming for Justice: Access for All — A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), p. 5.

friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance".[7]

34. The Special Rapporteur wishes to point out that, while this report focuses mainly on issues related to the formal justice system, in its broadest sense, the concept of access to justice involves not only access to the judicial system, but also access to other procedures, mechanisms and institutions able to assist individuals to claim their rights, including national human rights institutions, ombudsmen or mediation institutions (A/69/294, para. 53 and A/62/207, para. 38). Concerns and recommendations formulated with regard to the administration of the formal justice system are often relevant, mutatis mutandis, when it comes to these other avenues for redress and remedy.

### 2. Child-friendly legal aid

35. The right to access justice is inextricably connected to the right to legal assistance. As highlighted in previous reports, the purpose of legal aid is "to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people who would otherwise be unable to afford legal representation and access to the court system" (A/HRC/23/43, para. 27). Accordingly, the Special Rapporteur has advocated for a definition of legal aid that is as broad as possible, including "not only the right to free legal assistance in criminal proceedings, as defined in article 14 (3) (d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations"(ibid). A broad definition and application of legal aid is all the more important when dealing with children and children's rights.

36. As already noted by the Special Rapporteur, legal systems can be immensely confusing and difficult, if not impossible, to navigate for children, especially without the help of a legal professional. "Legal assistance provides children with the means to understand legal proceedings, to defend their rights and to make their voices heard" (A/HRC/23/43, para. 84). The right of children to have access to legal assistance is recognized in a number of international instruments, including the Convention on the Rights of the Child (in particular, in articles 12 and 40), and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

37. In its general comment No. 10, the Committee on the Rights of the Child further explained that, when preparing his/her defence, a child in conflict with the law must be guaranteed free and appropriate legal and other appropriate assistance.[8] Indeed, by virtue of their age, dependent status and economic circumstances most children are unable to pay for legal aid. The Special Rapporteur considers that given this reality, "children must have access to free legal assistance in criminal and in civil proceedings and administrative fees must be waived".[9]

38. As noted in a 2011 study, "the provision of timely, competent, and developmentally appropriate legal assistance directly advances a child's right to a fair, just, and participatory legal process. Child-friendly legal aid also has the potential to promote children's substantive rights".[10] In this respect, lawyers have a professional responsibility towards children and should therefore acquire the special skills to be able to take into account the unique attributes and needs of child clients and effectively deliver child-friendly legal aid.

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[7] General comment No. 5 (2003), para. 24.

[8] General comment No. 10 (2007), para. 49.

[9] UNDP, United Nations Children's Fund (UNICEF) and United Nations Office on Drugs and Crime (UNODC), *Child-Friendly Legal Aid in Africa* (2011), p. 11.

[10] Ibid, p. 24.

39. The Special Rapporteur believes it is essential that States adopt special measures to ensure children's meaningful access to legal aid that address their special needs and take into account their best interests.[11] Such measures should prioritize legal aid for children and should render legal aid "accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children".[12]

40. For this purpose, lawyers' codes of conduct should provide specific guidance regarding the representation of children (including concerning the nature of the relationship between the lawyer and child and the possible conflict between the duty of representation and the duty to act in the child's best interest). Lawyers must be aware that they represent exclusively the interests of the child and not the interests of other persons, such as parents, institutions or bodies. They should be trained in children's law and in child and adolescent development and able to communicate effectively with children and their legal guardians.

41. As noted in a previous report, where there is a shortage of qualified lawyers, "the provision of legal aid services may also include non-lawyers or paralegals" (A/HRC/23/43, para. 56). According to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the role played by paralegals in providing legal aid services where access to lawyers is limited should be recognized by the State.

42. Paralegals can complement the work of lawyers or work independently providing legal assistance that does not need to be provided by a lawyer. They could be paid professionals, but in many societies they are volunteers. Paralegals can often provide an essential link to the communities and groups they serve, as they often come from these very communities and they often know first-hand the language, the culture and the conditions in which the communities live and function, and the particular legal challenges they are facing. Using paralegals to deliver legal services and supplement the work of lawyers can prove extremely cost-effective.

43. Paralegals are often in a better position than lawyers to provide legal services tailored to the needs of specific communities and groups. In many countries, lawyers can be unaware of those specific needs, or even worse they may be uninterested in dealing with the specific communities. In a large number of countries, qualified lawyers are simply lacking. Under all these circumstances and more, paralegals can play an important role in bridging the gaps between the communities and the judicial system, thereby contributing to increased access to justice.

44. The Special Rapporteur wishes to underline that when use is made of paralegals, national legislation should ensure that minimum quality standards for their services are met and that the types of legal services they may provide are specified. For this purpose paralegals must be given appropriate training opportunities and, in some cases, operate under the supervision of a qualified lawyer (A/HRC/23/43, para. 56). In particular, paralegals "must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law".[13]

### 3. Informal justice systems

45. In many parts of the world, informal justice systems "form a key part of individuals' and communities' experience of justice and the rule of law, with over 80

[11] The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems include a list of special measures for the provision of legal aid to children, paras. 53–59.

[12] Ibid, para. 35.

[13] General comment No. 10 (2007), para. 49.

percent of disputes resolved through informal justice mechanisms in some countries".[14] Informal justice systems encompass many mechanisms of differing degrees and forms of formality, whether or not their role is officially recognized by the State. These informal mechanisms, whose role often includes the resolution of disputes and the regulation of conduct by adjudication or assistance to a third party, include tribal, culture and religion-based courts and often exist side by side with the formal justice system.

46. In many contexts, such informal justice systems "deal with issues that have a direct bearing on the best interests of women and children, such as issues of customary marriage, custody, dissolution of marriage, inheritance and property rights".[15] Yet, little research seems to have been done on the issues arising when children enter into contact with informal justice systems.[16]

47. People reach out to informal justice systems rather than the formal one for diverse reasons. Informal justice systems are often more accessible, comprehensible, familiar and affordable, and less formal. Informal justice systems are also often seen as providing for potentially quicker and less expensive remedies, which are perceived as more in accordance with specific cultural, religious or other traditional values and beliefs. Contrary to formal justice systems, informal justice systems' outcomes are also often perceived as emphasizing reconciliation, restoration, compensation and reintegration rather than custodial sanctions.

48. Informal justice systems nevertheless present extremely worrying aspects, in particular when it comes to the treatment of children. In reality, many informal justice systems reinforce existing societal or structural discrimination and power relations, in particular to the detriment of children, women and various minorities. In particular, in many societies, traditional values attribute little or no importance to the opinions and wishes of children, and, as a result, many informal justice systems ignore the rights of children, especially the rights to be heard in matters that affect them and to have their best interests protected.

49. It is important to recall that "such courts cannot hand down binding judgements recognized by the State unless the proceedings are limited to minor matters, they meet the basic requirements of fair trial and other procedural guarantees, and their judgements are validated by State courts and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant" (A/HRC/8/4, para. 38).[17] Judgements that do not conform to international human rights standards are simply not acceptable. It is essential to ensure that international human rights norms and standards concerning children are known and applied by informal justice systems, as the obligation to respect, protect and fulfil human rights extends to them as well.

## C. Child-sensitive adjudication

50. Notwithstanding the abundance of international treaties, rules, guidelines and principles that exist to protect children's rights, the Special Rapporteur notes that the treatment of children in judicial proceedings, both civil and criminal, is generally unsatisfactory. Justice systems are too often not adapted to integrate adequate consideration of children's rights. Judges and prosecutors often do not take children's cases, views or best interests seriously, and children's lawyers are often unequipped to represent them in a proper manner. It is unacceptable that children who come into contact with the justice system are often victimized or re-victimized.

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[14] UNDP, UNICEF and UN-Women, *Informal Justice Systems – Charting a Course for Human Rights-based Engagement*, p. 5.

[15] Ibid.

[16] Ibid., p. 12.

[17] See also Human Rights Committee general comment No. 32 (2007).

51. Against this backdrop, the importance of designing, developing and strengthening justice systems that are sensitive to children's needs, rights, well-being and best interests cannot be overemphasized. A child-friendly or child-sensitive justice system must guarantee the effective implementation of all children's rights, while giving due consideration to the child's level of maturity and understanding. In particular, child-sensitive justice must be "accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity".[18]

52. In consonance with the Committee on the Rights of the Child, the Special Rapporteur is of the opinion that the scope of child-sensitive justice should extend to "all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies".[19]

53. As the Special Rapporteur has recalled on countless occasions, judges, prosecutors and lawyers are in a privileged position and have a particular responsibility to ensure the protection and promotion of both human rights and the rule of law. In particular, judges have a proactive duty to ensure that they uphold international human rights law and standards at all stages of court proceedings. To be able to make appropriate decisions on matters concerning children and uphold their rights, judges, lawyers and prosecutors must have received specialized training.

### 1. Children in conflict with the law

54. While the State is entitled to seek justice from children alleged to or accused of having infringed the penal law, it still has obligations with regard to ensuring that their treatment in the justice system is fair. The Special Rapporteur deplores that too often justice systems, and in particular criminal justice systems, are designed for adults and have not integrated the specific procedural safeguards due to children.

55. At a very minimum, every child alleged as or accused of having infringed the penal law shall be granted the guarantees enumerated in article 40, paragraph 2 (a) and (b), of the Convention on the Rights of the Child. While some of these guarantees are generally established in international human rights law, in particular in article 14 of the International Covenant on Civil and Political Rights, other guarantees are granted to children because of their specific status as minors.

56. For instance, the Convention on the Rights of the Child provides that a child has the right to be informed of the charges against him or her including "through his or her parents or legal guardians" and the right to legal "or other appropriate" assistance. It also provides that children must also be tried "without delay", while the International Covenant on Civil and Political Rights requires that they be tried "without undue delay". This means that the swiftness of the proceedings is especially important and implies that children have particularly prompt access to legal counsel. Parents or guardians of a child are normally entitled to participate in the proceedings but, depending on the best interests of the child, they may either be required to attend hearings or be excluded from participation.[20]

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[18] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, section II (c).

[19] General comment No. 12, para. 32.

[20] Beijing Rules, rule 15.2.

57. There is also a particular need to protect children's right to privacy. As stated in the Beijing Rules, "the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published" (rules 8.1 and 8.2). The right of children to privacy therefore justifies an exception to the fundamental principle that court proceedings shall be held in public.

58. States have an obligation to seek to "establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system" through "laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law".[21] The Committee on the Rights of the Child explained that "a comprehensive juvenile justice system further requires the establishment of specialized units within … the judiciary, the court system, the prosecutor's office", inter alia, as well as "specialized defenders or other representatives who provide legal or other appropriate assistance to the child".[22] The Special Rapporteur notes that specialized juvenile courts improve consistency, efficiency, coordination and respect for children's rights within the administration of justice. Specialized juvenile courts will not only improve how the justice system works for children but also allow judges, prosecutors, lawyers and judicial personnel to increase their expertise in working with children.

59. International human rights law requires that States establish a minimum age of criminal responsibility under which a child cannot be held accountable for his or her acts. While the Convention on the Rights of the Child does not provide a specific age, it says that the minimum age should reflect the mental capacity and moral competence of the child. According to the Committee on the Rights of the Child, the age of 12 years constitutes the absolute minimum age of criminal responsibility.[23] While the Special Rapporteur agrees that 12 years is an absolute minimum, she strongly believes that States should seriously consider increasing the minimum age of criminal responsibility as high as possible, in line with the latest available scientific research carried out on the subject of child mental development and competence.

60. In this context, the Special Rapporteur is extremely concerned about cases where children are tried as adults. Indeed, under some jurisdictions, for certain types of serious offences, while there exist a juvenile justice system and a legal framework applicable to child offenders, children can be tried as adults in the regular justice system. The Special Rapporteur believes that the possibility of trying children as adults not only goes against the essence of the rights contained in the Convention on the Rights of the Child, but also allows unacceptable room for arbitrariness. The decision to try a child as an adult is often left to the discretion of the court or a judge, who are certainly not qualified to assess whether a child has reached a level of mental development and discernment sufficient to be tried as an adult.

### 2. Children's participation as victims and witnesses

61. As highlighted by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, "age should not be a barrier to a child's right to participate fully in the justice process".[24] For that reason, "every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids

[21] Committee on the Rights of the Child general comment No. 10, para. 90.
[22] Ibid., para. 92.
[23] Ibid., para. 32.
[24] Economic and Social Council resolution 2005/20 of 22 July 2005, annex, para. 18.

and other assistance".[25] The right of a child to participate in the justice process is not limited to criminal trials, but extends to civil proceedings such as those relating to divorce and separation, custody, care, adoption and inheritance matters.

62. The participation of children as either victims or witnesses in judicial proceedings can have a negative psychological impact on them, which is exacerbated when they have to go through insensitive treatment and procedures that do not integrate respect for their well-being and dignity and do not take into account their special needs and rights. In addition, participation in criminal proceedings often carries a non-negligible level of risk for both the physical and psychological integrity of the child. Special measures must therefore be put in place to protect child victims and witnesses from victimization or re-victimization in the justice system.

63. As already explained by the Special Rapporteur in the context of an analysis of the rights of women in the criminal justice system, "at minimum, two sets of protection measures are necessary to enable witnesses and victims to come forward safely for the purpose of collaborating with the criminal justice system: (a) measures and procedures put in place by the judicial authorities while investigating crimes or taking testimony in the courtroom; (b) protection measures and safeguards provided, when necessary, before, during and after judicial proceedings through formal witness protection programmes" (A/66/289, para. 64).

64. The following are examples of measures that can be taken during trials concerning children:

(a) Limit the number of interviews and statements given by the child, including by using video recording;

(b) Have the child testify in a separate courtroom; excluding the public from the court for part or the entirety of a trial;

(c) Make separate waiting rooms available for children;

(d) Limit the direct cross-examination by the alleged perpetrator;

(e) Prohibit the publication or dissemination of information that might reveal the identity of a victim or witness;

(f) Adjust questioning so as to eliminate unnecessary, intrusive, repetitive or embarrassing questions;

(g) Allow for frequent breaks during the testimony, altering the courtroom settings to make them less formal;

(h) Use a support person during testimony.

Needs may differ depending on the gender of the child, in which case measures will have to be tailored to take the specificities into account.

65. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime require that "where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child" (para.14). In this context, the existence of witness and victims protection programmes tailored to children's needs will provide for a more enabling environment for the reporting of cases, encouraging cooperation with the justice system and avoiding the re-victimization of children throughout the judicial process.

[25] Ibid

66. It is essential to remember that all processes in which a child is heard and participates must be voluntary, transparent, informative and respectful, be set in a child-friendly environment and use child-sensitive methods.[26]

### 3. Deprivation of liberty and other types of sanctions

67. As seen above, because of their unique vulnerability, children in conflict with the law require higher standards and broader safeguards to be applied to them, particularly at the sentencing stage in criminal proceedings. For instance, the Human Rights Committee recognized that article 24, paragraph 1, of the International Covenant on Civil and Political Rights, which grants children the right to special protection measures owing to their status as minors, "entails the adoption of special measures to protect the personal liberty and security of every child, in addition to the measures generally required by article 9 for everyone".[27]

68. While criminal sanctions can encompass a broad range of measures, the Special Rapporteur is particularly concerned about the situation of children deprived of their liberty as a result of a criminal trial. Indeed, in a recent report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment highlighted that "children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment". He further stated that "even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder".[28] Finally, he noted that a number of studies had shown that, "regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development".[29]

69. According to the Havana Rules, deprivation of children's liberty should be limited to exceptional cases. The Convention on the Rights of the Child requires that a child may be deprived of his or her liberty only as a measure of last resort and for the shortest period of time possible (art. 37). It further stipulates that any decision to deprive a child of liberty must be subject to periodic review of its continuing necessity and appropriateness.[30] Finally, "the best interests of the child must be a primary consideration in every decision to initiate or continue the deprivation".[31]

70. It is essential, therefore, that judges in particular, but also prosecutors, be aware of the specific negative effects the criminal sanctions they can order may have on children, in particular sanctions involving deprivation of liberty. Prosecutors and judges must primarily consider the best interests of the child when requesting and imposing sanctions on children and this includes making an individual analysis of the circumstances of both the offence and the child. Prosecutors and lawyers should always first consider alternative measures to detention, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, to ensure that children are treated with full respect for their needs and rights, as well as for their well-being and development.[32]

71. The Special Rapporteur wishes to recall that some types of sanctions are forbidden under international law when it comes to their application to persons who were children at the time of the offence. She concurs with the Special Rapporteur on torture, who pointed

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[26] Committee on the Rights of the Child general comment No. 12, para. 134.
[27] Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 62.
[28] A/HRC/28/68, para. 16.
[29] Ibid., para. 33.
[30] See also Human Rights Committee general comment No. 35, para. 62.
[31] Ibid., para. 62.
[32] See article 40 of the Convention on the Rights of the Child.

out that the sentencing to death of juveniles is not only forbidden under international law but has also been accepted so universally as a serious violation of human rights that it must be considered a norm of *jus cogens*.[53] Life sentences with the possibility of release or parole are also expressly prohibited under international human rights law.[54]

72. Judges and prosecutors must also apply the principle of the best interests of the child in the context of pretrial detention. On many occasions, the Special Rapporteur has observed that pretrial detention was the rule rather than the exception, in contradiction of principles of international law. This situation is particularly worrying when children are held in pretrial detention. She therefore calls on the competent authorities to be extremely vigilant when imposing pretrial detention on children, which, as in instances of deprivation of liberty ordered at the end of a trial, they must justify in writing, having shown that they took into account the child's special needs, rights and best interests.

73. Children are also detained for other reasons than as the result of a criminal trial. This is the case of migrant or asylum-seeking children. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights provides that anyone who is deprived of their liberty by arrest or detention is entitled to have the lawfulness of their detention reviewed before a court. Thus, in exercising this judicial oversight competence, judges also have to take into account the best interests of the child.

### 4. Criminal sanctions against parents

74. The Special Rapporteur wishes to draw attention to the situation of children whose parents have been sentenced to imprisonment. As recognized by the African Committee of Experts on the Rights and Welfare of the Child, children may face many violations of their rights when their parents or primary care giver come into conflict with the law, including stigmatization by association and harm caused by the separation.[55] Children whose parents are imprisoned also often experience deterioration in their living conditions, their relationships with others and their community, and their physical and mental integrity.

75. For this reason, the Bangkok Rules provide that "non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate" (rule 64). Article 30 of the African Charter on the Rights and Welfare of the Child states that "special treatment" should be provided to "expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law". In its general comment No. 1 (2013) on article 30, the African Committee of Experts on the Rights and Welfare of the Child asserted that the provisions of article 30 apply not only to mothers, but also to the primary caregivers, who may be the father, another member of the family or a foster parent.[56] The Special Rapporteur considers that prosecutors, when requesting sanctions against parents—and judges, when imposing such sanctions—have a responsibility to consider not only the individual circumstances of the defendant, but also the best interests of the defendant's children.

76. Children who are living in prison with their parents, usually their mother, are particularly vulnerable to violations of their right to development, health care, education and recreation. The Special Rapporteur recalls that decisions to allow children to stay with their mothers in prison should always be based on a careful consideration of the best interests of the children that includes an individual analysis of the circumstances of the

[53] A/67/279, para. 62.

[54] See article 37(a) of the Convention on the Rights of the Child, as well as general comment No. 10, and Human Rights Committee general comment No. 21 (1992) on humane treatment of persons deprived of their liberty.

[55] African Committee of Experts on the Rights and Welfare of the Child general comment No. 1 on children of incarcerated and imprisoned parents and primary caregivers, para. 3.

[56] Ibid., para. 10.

case.[37] It is also important that the child's situation should regularly undergo judicial review, as circumstances may change and affect the analysis of the best interests of the child.

77. Children of parents sentenced to death often suffer a particularly devastating ordeal. According to the Working Group on Children of Incarcerated Parents, "existing research has consistently connected a parent's death sentence or execution with major psychological and emotional implications for children and families", some children even present post-traumatic stress disorder symptoms.[38] The trauma caused by both the anxiety relating to the anticipation of the execution and the actual execution itself must be taken into account by prosecutors and judges before requesting or imposing the death penalty on defendants with children. Despite the particular emotional and psychological distress of children of parents sentenced to death—who also often experience social isolation and stigmatization—the Special Rapporteur is extremely concerned that these children are given little attention and support. In this context, it is even more important for prosecutors and judges to consider the best interests of the defendant's children before requesting and ordering the death penalty.

## D. Alternatives to judicial proceedings

78. According to the Convention on the Rights of the Child, the aim of juvenile justice is the child's rehabilitation and social reintegration. The Beijing Rules provide that "the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" (rule 5.1). Yet, the Special Representative of the Secretary-General on Violence against Children has pointed out that "more than 1 million children are deprived of their liberty worldwide, and countless children face violent and degrading treatment throughout the criminal justice process".[39]

79. For these reasons, the Special Rapporteur considers that alternatives to criminal proceedings and trial should be available for children alleged as, accused of, or recognized as having infringed penal law. The necessity to provide for alternatives to criminal proceedings in juvenile cases has been underlined by both the Human Rights Committee and the Committee on the Rights of the Child.[40] These alternative mechanisms can either replace criminal proceedings or complement them, and they should be available at all stages of criminal justice proceedings, from the moment of arrest until after the conviction, when there is one.

80. The process of dealing with children alleged as, accused of, or recognized as having infringed penal law without resorting to criminal proceedings is known as "diversion" and serves to avoid the possible negative effects of criminal proceedings on children. Diversion can involve different types of measures, including measures based on the principle of restorative justice.

81. According to the basic principles on the use of restorative justice programmes in criminal matters, "restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities" (preamble)[41]. Restorative

[37] Bangkok Rules, rule 49.

[38] Working Group on Children of Incarcerated Parents, "Children of parents sentenced to death or executed", August 2013, p. 3.

[39] Special Representative of the Secretary-General on Violence against Children, "Promoting restorative justice for children", 2013, p. 1.

[40] See Human Rights Council general comment No. 32, para. 44, and Committee on the Rights of the Child general comment No. 10.

[41] Economic and Social Council resolution 2002/12.

justice aims to rehabilitate and reintegrate child offenders in their communities "through a non-adversarial and voluntary process, based on dialogue, negotiation and problem-solving" and by ensuring that they understand "the harm caused to the victim and the community" and acknowledge "accountability for criminal behaviour and reparation of its consequences".[42]

82. Guideline 18 of the Guidelines on the Role of Prosecutors specifically provides that:

> prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pretrial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

83. Guideline 19 stipulates that "prosecutors shall use their best efforts to take prosecutor action against juveniles only to the extent strictly necessary". The Beijing Rules further provide that "prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings" (rule 11, para. 2). In some instances, judges can order diversion before the beginning of a trial at the stage of preparatory hearings.

84. Against this background, the Special Rapporteur considers that promoting strategies that provide alternatives to formal criminal proceedings, including measures based on the principle of restorative justice, is as important as building and strengthening child-sensitive administration of justice for juveniles. However, as noted by her predecessor, "the use of alternative mechanisms should not lead to substandard justice or obstruct the right to obtain a court ruling" (A/HRC/8/4, para. 35). It is therefore essential that any alternative measures, including but not limited to measures applied in the context of diversion, provide children with essential due-process guarantees to ensure their fairness. Moreover, the Committee on the Rights of the Child explained in its general comment No. 10 that diversion "should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding[s]" (para.27). Lastly, the child must freely and voluntarily give consent for any measures of diversion and be given access to legal assistance to assess the alternative measure proposed.

85. The Special Rapporteur concurs with the Special Representative of the Secretary-General on Violence against Children, who, in the context of discussing restorative justice measures, noted that "to ensure that the rights of the child are respected at all times and that the process is lawfully conducted, a competent authority, such as a child justice court, should have effective judicial overview".[43]

## E. Education, training and capacity-building for judges, prosecutors and lawyers

86. As seen throughout the preceding sections of this report, appropriate education, training and capacity-building are fundamental to ensure that those who come into contact with children in the justice system, especially judges, prosecutors and lawyers, respect, protect and fulfil children's rights. A number of international instruments, including the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of

[42] Special Representative of the Secretary-General on Violence against Children, op.cit., p. 2.
[43] Ibid., p. 20.

Lawyers, the Guidelines on the Role of Prosecutors, and the Bangalore Principles of Judicial Conduct, emphasize the necessity of quality education and proper training to enable judges, prosecutors and lawyers to discharge their functions in a manner that ensures equality of treatment of all before the courts.

87. The Special Rapporteur is convinced that appropriate education and training is a determining factor in guaranteeing the competence, independence and impartiality of the justice system. In her first report to the Human Rights Council, the Special Rapporteur noted that the lack of appropriate capacity-building initiatives had a direct impact on judges' capacity to render justice independently and impartially. As a consequence, judges and lawyers require opportunities to enhance their capacity to develop argumentation and analyse issues from a human rights perspective (A/HRC/14/26, para. 24).

88. When it comes to children, understanding their development is fundamental to understanding their behaviour and their capacity to participate in legal proceedings, including their ability to interact and communicate with those who assist them, comprehend what is at stake, and make informed choices about their situation.[44] Legal-assistance providers have a duty "to understand how children communicate cognitively, linguistically, and emotionally and how this capacity changes over the course of childhood", and that duty requires "training in how to communicate with children".[45] Within their respective functions, lawyers, prosecutors and especially judges have an obligation to uphold international human rights law, including with respect to children's rights. Moreover, as one of the three branches of power, the judiciary is directly bound by the international human rights obligations of the State.

89. Building a child-friendly justice system, therefore, requires institutionalized and sustained efforts in the form of specialized training programmes, on-the-job education and capacity-building that focus on international human rights norms and standards, fundamental principles and related obligations. It also requires national laws to protect children's rights. Most child-specific international instruments, including the Convention on the Rights of the Child, the Beijing Rules, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, make reference to this necessity.

90. These international human rights treaties and other instruments, as well as the jurisprudence arising from judicial and quasi-judicial bodies, provide judges, prosecutors and lawyers alike with legitimate instruments for adjudication that respects children's rights, needs and vulnerabilities.

## IV. Conclusions

91. **Every day, throughout the world, countless children come into contact with the justice system. As justice systems are often not adapted to the specificities of children, far too many children suffer adverse consequences from treatment that directly violates or disregards their fundamental human rights. In this context, judges, prosecutors and lawyers have, within the limits of their professional functions, a unique opportunity to contribute significantly to respecting, protecting and fulfilling children's rights. By their actions judges, prosecutors and lawyers can influence the future course of children's lives. As a result, by the very nature of their functions, they have a great responsibility towards children.**

92. **The Special Rapporteur has considered it important to go beyond the more limited notion of juvenile justice in this report so as to reflect the diverse experiences**

[44] UNDP, UNICEF and UNODC, *Child-Friendly Legal Aid in Africa* (2011), p. 6.
[45] Ibid., p. 11.

of children when they encounter the justice system as victims or witnesses, or because they are in conflict with the law, or they are parties to justice proceedings. In all these aspects of the justice system, children have special rights, needs and interests that must be considered.

93. The administration of justice, whether in criminal, civil or administrative processes, must therefore be guided at all times and in all matters concerning children by the overriding principles of non-discrimination, the best interests of the child, the right to life and development and the right to be heard. Creating and strengthening training and capacity-building programmes on international human rights law and jurisprudence, in particular on children's rights, for all justice operators is an important requisite for a competent, independent and impartial judiciary and legal profession to be in a position to deliver justice to children.

94. Proper education and training enable judges, prosecutors and lawyers to acquire the necessary knowledge and skills to discharge their duties in conformity with States' legal obligations relating to children. Finally, the Special Rapporteur wishes to emphasize the importance of children's agency. Indeed, the purpose of rendering the administration of justice child-sensitive is not to make children even more dependent than they already are, but to empower them to have a say and make decisions about matters that may affect them.

# V. Recommendations

95. The following recommendations should be read in conjunction with previous recommendations of the Special Rapporteur, in particular those contained in reports A/66/289, A/HRC/8/4, A/HRC/14/26 and A/HRC/23/43.

### General recommendations

96. States should put in place a legal framework conducive to the development and reinforcement of a child-sensitive justice system, in line with international human rights instruments relating to children, especially the Convention on the Rights of the Child.

97. Children's rights, in particular the four fundamental principles contained in the Convention on the Rights of the Child, should be taken into account by judges, prosecutors and lawyers in the performance of their functions in all matters concerning children.

### Children's access to justice and legal aid

98. States should develop specific strategies, policies and measures to identify and tackle obstacles encountered by children in accessing justice.

99. To the extent possible, legal aid should be provided free of charge to all children in both criminal and civil proceedings. Such legal aid should be tailored to the specific needs of children and respect, in particular, children's right to express their views and to be heard.

100. States must seriously consider the developmental difference between children and adults when designing legal assistance schemes for children. Children's needs and best interests should also be integrated into existing legal assistance programmes.

101. Specific legislation should ensure minimum quality standards for the work of paralegals and define the types of legal services they can offer.

**102. Where they exist, informal justice systems should integrate and apply international human rights norms and standards concerning children in all their decision-making procedures.**

### Child-sensitive adjudication

**103. States should design, develop and strengthen justice systems that are sensitive to children's needs, rights and well-being, and allow for their best interests to be the primary consideration. Child-sensitive justice should extend to all relevant judicial proceedings affecting the child.**

**104. In judicial proceedings, children should not only be granted all guarantees generally recognized in international human rights instruments, but also guarantees specific to their status as minors.**

**105. States should set a minimum age for the criminal responsibility of children that takes into account new scientific findings on the level of maturity and discernment of children; this minimum age should be as high as possible, but never lower than 12 years old.**

**106. Regardless of the circumstances of the crime, children should never be tried as adults. Their personal circumstances, including the fact that they are minors, should always be weighed up in all judicial proceedings.**

**107. States should adopt special measures and protection, including protection programmes, to facilitate children's participation in criminal proceedings as victims and witnesses in a way that respects and protects their needs and rights.**

**108. When sentencing children to criminal sanctions, judges should consider the effect of their sentences on the child and balance this against the child's best interests. Prosecutors should also make provision of the same considerations when requesting criminal sanctions in the cases under their purview. Children's deprivation of liberty should always be a measure of last resort and for the shortest possible period of time.**

**109. When sentencing parents, in particular to the death penalty, judges should also consider the effect of their sentences on the well-being of the child and the child's best interests. Prosecutors should apply the same consideration when requesting sanctions against parents.**

### Alternatives to judicial proceedings

**110. Alternatives to judicial proceedings, including measures based on the principle of restorative justice, should be available for children; such alternatives should always be considered first.**

**111. States should establish guidelines and standards to govern the possibilities of diverting children away from the criminal justice system and of using restorative justice programmes, thereby preventing arbitrariness. Each case should nevertheless be considered individually and in the light of the specific circumstances of the case and the child.**

### Education, training and capacity-building for judges, prosecutors and lawyers

**112. Institutional training on children's rights—including relevant national, regional and international human rights law and jurisprudence—should be established and made compulsory for judges, prosecutors and lawyers, so as to ensure a child-friendly justice system.**

**113. International human rights law, in particular regarding children's rights, should be included in the curricula of all law faculties and law schools, and in the**

**curricula of schools for the judiciary and the academic programmes of bar associations.**

114. **Children's rights expertise should be promoted, valued and integrated into all types of legal training and capacity-building for the judiciary and members of the legal profession.**